



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-SIXTH REGION**



**PAT SALMON AND SONS, INC.**

**Employer**

**and**

**Case 26-RC-8159**

**CENTRAL ARKANSAS AREA LOCAL  
AMERICAN POSTAL WORKERS UNION, #189**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>1</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.<sup>3</sup>

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

**INCLUDED:** All full-time and regular part-time inner city and over-the-road truck drivers employed by Pat Salmon and Sons, Inc., and its subsidiaries of Fast Freight West, Inc. and Elbar, Inc., at its North Little Rock, Arkansas, terminal.

**EXCLUDED:** All office clerical employees, washers, mechanics, professional employees, technical employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Central Arkansas Area Local American Postal Workers Union, #189.**

### **LIST OF VOTERS**

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. ***Excelsior Underwear***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Co.***, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper Objections are filed. ***North Macon Health Care Facility***, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 1407 Union Avenue, Suite 800, Memphis, TN 38104-3627, on or before **April 24, 2000**.

#### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 1, 2000**.

**DATED** April 17, 2000, at Memphis, TN.

/S/

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Ronald K. Hooks, Acting Regional Director  
Region 26, National Labor Relations Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627

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1/ Both parties filed briefs which have been duly considered.

2/ The parties stipulated that Pat Salmon and Sons, Inc., hereinafter referred to as the Employer, is an Arkansas corporation, which is engaged in the transportation of mail. During the past twelve months, a representative period, the Employer derived gross revenues in excess of \$50,000 for the transportation of mail from the State of Arkansas, directly to points outside the State of Arkansas.

3/ The Employer operates a trucking company and is engaged in the transportation of mail. The Employer operates out of its terminal located in North Little Rock, Arkansas. The Employer owns and operates two other companies that are also engaged in the transportation of mail. These companies are Elbar, Inc., and Fast Freight West, Inc. All three companies operate out of the same terminal. The Employer contended at the hearing and argues in its brief that the petition should be dismissed as there is an impermissible conflict of interest that should serve to disqualify the Petitioner as a collective bargaining representative of the petitioned-for unit.

The record discloses that the Employer, from its North Little Rock terminal, through its subsidiaries, Elbar, Inc., and Fast Freight West performs over-the-road long haul mail transportation for the U.S. Postal Service. (USPS or Postal Service) The Employer, from this same terminal, through Pat Salmon, performs both long haul as well as inner city short haul mail transportation for the Postal Service. According to the Petitioner, and there is no evidence in the record to the contrary, over-the-road long haul work has traditionally been done by the private sector and has never been part of any jurisdictional work claimed by any of Petitioner's Postal Service bargaining units. The Petitioner, through its motor vehicles division, does represent employees who perform inner city short haul work at various Postal Service facilities throughout the country. However, there are no Postal Service employees performing this short haul work at the Postal Service facilities being serviced by the unit of the Employer's employees being sought by the Petitioner herein. Additionally, the record discloses that Petitioner, through its various locals, does represent employees in private sector bargaining units servicing other Postal Service locations throughout the country. This includes a unit of drivers employed by the Employer's Elbar Inc. subsidiary based in Albuquerque, New Mexico. At present the total number of private sector employees represented by Petitioner numbers between approximately 700 to 1000 employees. These employees are represented in several bargaining units at least one of which, according to Petitioner, is operating under a collective bargaining agreement negotiated by either the Petitioner's International Union or an affiliated local.

The Employer points to the fact that Petitioner's International Union (APWU) has taken a consistent position against the privatization of United States Postal

Service jobs and has consistently and uniformly opposed the contracting out or subcontracting out of any jobs covered by its national agreement with the USPS. The Employer notes that the Petitioner's International Union has filed several grievances at the national level on this issue and has even considered proposals for it to obtain for itself Postal Service highway contracts under \$100,000. The Employer also notes that, in order to stop the contracting out of work, the APWU has negotiated a provision in the national agreement to restrict the USPS's right to contract out work.

The particular provision in question is Article 32, Subcontracting. This article requires the USPS to give the APWU certain information regarding the awarding of new contracts or the renewal of contracts to truck carriers for the transportation of mail. Of particular importance to the Employer is Section H, the language of which is set forth below:

The information will be furnished for all routes covered by this Section and subject to renewal, extension, conversion of existing postal vehicle service to highway contract service or new highway contract service subject to the limitations stated herein. The following contracts are not encompassed by this Section: services involving collection and box delivery; small contract operations in areas where no Postal Vehicle Service operation is currently operating and where Postal Vehicle Service operations is economically unfeasible; or any star route contracts let on a temporary or emergency basis. [emphasis supplied].

The Employer maintains that the highlighted language would allow Petitioner to seek to obtain subcontracted work for USPS employees, e.g. work presently being performed by the Employer's employees, if it is not economically unfeasible for the APWU-represented employees to do the work. The Employer contends the APWU-represented employees are in head-to-head competition with the petitioned-for Salmon and Sons unit employees for Postal Service work. Thus, Petitioner is a direct competitor with the Employer and the Petition should be dismissed. The Employer's contention is not supported by the record evidence.

Frank Romero, National Organization Director, APWU, testified that his organization is not trying to recover or obtain the highway transportation contract work performed by the Employer. The APWU is not going after such contract hauling work because this work has traditionally been awarded to the private sector and has never been part of the jurisdiction of the APWU.

In an award by the National Arbitration Panel dated July 24, 1992, Arbitrator Carlton J. Snow concluded that the language of article 32 of the national labor agreement did not establish a bidding competition between the APWU and

subcontractors because the APWU was not in a position to contract with USPS to provide such services. The arbitrator concluded that the contract was not intended to create a bidding competition because the APWU had no equipment, motor vehicles or transportation employees for the purposes of competing for bids.

The APWU represents motor vehicles craft employees under its contract with USPS. At some postal service locations these employees deliver mail from facility to facility in what were described as inner city routes. These employees do not make long haul runs. The Employer has inner city contracts with the USPS affecting approximately 40 employees. However, there is no competition for work created because, the Little Rock, Arkansas, Postal Service does not have a motor vehicle division. Local # 189, the Petitioner herein, does not have a motor vehicle division and does not represent any motor vehicle service employees.

Petitioner is not in business competition with the Employer. As the parties stipulated at the hearing: Petitioner has no equipment, no motor vehicles and no transportation employees for transporting mail. Petitioner owns no trucks and facilities necessary for transporting mail. Petitioner employs no mechanics, dispatchers, drivers or others for purposes of transporting mail. By this stipulation the Employer has tacitly acknowledged that this case is distinguishable from Bausch & Lomb Optical Co., 108 NLRB 1555, 1558 (1954). In that case the union owned and operated a business that was in direct competition with the employer whose employees it sought to represent. As noted, such is not the case here and appears unlikely to be the case in the future.

The Employer argues in the instant case that direct competition is not a necessary finding here. That it is enough if there exists ... “the proximate danger of infection of the bargaining process” NLRB v. David Buttrick Company, 399 F. 2d 505, 507 (1<sup>st</sup> Cir. 1968). The Employer maintains that the potential for a conflict of interest is a sufficient finding to disqualify Petitioner. The Employer speculates that if certified, USPS employees represented by Petitioner might try to interfere with its business operations by failing to assist in the loading and unloading of vehicles at postal facilities. It also speculated postal employees may unfairly or falsely claim the Employer’s employees engaged in safety violations or other rules infractions with a view toward causing the Employer to lose its contracts and being put out of business. The Employer also speculates that Petitioner may make unreasonable bargaining demands during negotiations, again, with the purpose of putting it out of business.

The Employer’s position misses the point. The Court remanded Buttrick, supra, so the Board could determine whether the potential for conflict of interest would have an adverse affect on the bargaining relationship. The Board accepted the remand and in reaffirming its original decision found that evidence of the potential for conflict of interest was remote. David Buttrick Company, 167 NLRB 438 (1967). Upon review the Court reconsidered its earlier position and affirmed

the Board. In so doing the Court stated there was a considerable burden on an employer to come forward with a showing that a danger of a conflict of interest interfering with the collective bargaining process is clear and present NLRB v. David Buttrick Co., 399 F.2d 505, 507 (1<sup>st</sup> Cir. 1968). The Employer has not met that burden here. Moreover, as noted above, the record discloses that the Petitioner's International Union through its various locals currently has bargaining relationships with private sector employers including one with Petitioner's subsidiary Elbar, Inc. There is no evidence in the record that any of the contentions speculated on by the Employer have in fact occurred. Accordingly, the contention that the petition should be dismissed based on an impermissible conflict is rejected.

4/ At the hearing the Petitioner amended its petition to include the truck drivers ostensibly employed by Elbar, Inc., and Fast Freight West as well as those employed by Pat Salmon and Sons (the Employer) all of whom are based at the Employer's North Little Rock terminal. The Petitioner asserts that these three entities constitute a single employer in that they are a part of a single integrated enterprise. Conversely, the Employer maintains that Elbar and Fast Freight are separate and distinct entities from Salmon and Sons whose employees do not share the same community of interest.

Don G. Salmon is the president of both Pat Salmon and Sons and Fast Freight West. His brother, Tom Salmon, holds the position of secretary for these two companies. With regard to Elbar Inc., Tom Salmon is president while Don Salmon is secretary. Jeff Boone is the general manager for Salmon and Sons. Herman Brown is the Employer's operations manager for all three entities. Larry Songer holds the position of terminal manager for both Salmon and Elbar. Herman Brown's duties include insuring that all Department Of Transportation (DOT), Department Of Labor (DOL), and Environmental Protection Agency (EPA) compliance regulations are met. Brown is responsible for all terminal managers and the logistics of each terminal. Brown is also responsible for contract administration and the solicitation of new contracts and renewal of existing contracts with USPS.

In 1993 the Employer purchased Elbar, Inc. The Employer purchased the name and goodwill as Elbar had previously had contracts with USPS. The Employer continues to use the Elbar name in soliciting and obtaining contracts. Elbar has a separate federal identification number and separate highway route contracts with USPS. These are over-the road contracts. These contracts have origination points in Jacksonville, Florida; Greensboro North Carolina; Atlanta, Georgia and Memphis, Tennessee. The Employer operates the Elbar contracts using mainly a relay driver system. Sometimes a team driver system is used. The Elbar trucks have the designation "Elbar, Incorporated" on the cabs. In 1999, in case 28-RC-5808 Albuquerque Local 380 of APWU was certified as bargaining representative for a unit of employees of Elbar/Division of Pat Salmon in Albuquerque, New Mexico. No party has contended in this case that Elbar



employees operating out of North Little Rock are ,or should be, a part of the Albuquerque unit.

Fast Freight West was acquired by the Employer in approximately 1987. It has one contract with USPS. Fast Freight operates a Memphis, Tennessee to Denver, Colorado contract. Five Fast Freight employees work out of the North Little Rock terminal.

The Employer maintains a group of extra board drivers who work out of its North Little Rock terminal. These extra board drivers are used to fill in for regularly assigned drivers on their days off, to fill in for vacations and for emergency situations. The record does not disclose how many drivers are carried on the extra board. The Employer uses these employees to fill in for all three named companies. Moreover, employees can transfer between companies as vacancies occur. A driver can transfer from the extra board to a regular run if there is a vacancy at any of the three companies. In emergency situations, drivers from one named company can be assigned to run the route of one of the other companies.

The Employer's (Salmon and Sons) contracts are supply route contracts, which involve moving the mail between processing and distribution centers to the area offices. There are approximately 40 area offices that the Employer delivers to in and around the North Little Rock area, including offices in Little Rock, Pine Bluff and Jonesboro, Arkansas. The drivers will pick up the mail at one location either loading or assisting in the loading of the mail and deliver the mail to the appropriate area office or offices. Again, the driver will either unload or assist in the unloading of the mail. The driver will receive any mail to be returned to the originating office and return to the Little Rock processing center. The Employer also has long haul or over-the-road contracts with USPS. One example of such a run is the Little Rock, Arkansas, to New Orleans, Louisiana, route that is a relay run. A driver leaves Little Rock and drives halfway to New Orleans and is met by a driver based in New Orleans. The drivers exchange trucks and then return to their originating points.

Larry Songer, North Little Rock terminal manager, determines the work assignments for Elbar employees and the Employer. Fast Freight employee's assignments are generally initiated out of Oklahoma City with input from Songer based on the needs of the Employer. Matters such as holidays, regular leave and sick leave are different between the three companies because they are determined by the different contracts with USPS. However, Larry Songer authorizes the taking of leave, holidays and other such matters. All paychecks for the Employer's companies are issued from the North Little Rock office. The Employer employs several dispatchers at its North Little Rock terminal all of whom have occasion to dispatch for all three companies.

The Employer's companies have different wage determinations by contract. The Department of Labor surveys the wages and benefits in the area that is an originating point for an USPS contract. The Employer's Pat Salmon employees are under the Little Rock area Service Contract Act wage determination. The Fast Freight West employees are under the Memphis area wage determination and the Elbar employees are under various wage determinations because of the different contracts. They are the southern state wage determinations for the states of Florida and North Carolina, the Atlanta Georgia wage determination and the Memphis Tennessee, wage determination. The record does not reflect the specific wage scales the Employer pays its employees.

The record reflects that the named companies here are commonly owned and have common officers and common management. There is centralized control of labor relations and common supervision through operations manager Herman Brown and terminal manager Larry Songer. The Employer and its companies are in the same business of transporting mail. While the different companies are under different contracts with USPS, that is more of a reflection of how the Employer chose to bid for the various contracts. The fact the Employer, and not the different companies, chose to bid for contracts in that manner is further evidence of the interrelation of operations between the companies. I find that the Employer, Elbar, Inc. and Fast Freight West constitute a single integrated enterprise and a single employer within the meaning of the Act. See RBE Electronics of S.D., Inc., 320 NLRB 80 (1995).

The record reflects the unit would include approximately 209 employees who are designated as employees of Pat Salmon, and this number includes the extra board drivers. There are 45 Elbar designated employees and 5 Fast Freight employees.

The parties stipulated that the following individuals are supervisors within the meaning of the Act and shall be excluded from the unit: Don Salmon, president; Tom Salmon, secretary to the corporation; Jeff Boone, general manager; Herman Brown, operations manager; Larry Songer, terminal manager and dispatchers Larry McGowan, Wayne Belew, Valentine Huffman and Lee Mashburn.

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#### CLASSIFICATION INDEX

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